

REMARKS

Claims 1-9, 13, and 15-16 are pending in the present application. Claims 1-3, 5, 7, 15 and 16 were amended in this response to improve form. No new matter was introduced as a result of the amendments. Entry of the amendments and favorable reconsideration are earnestly requested.

CLAIM OBJECTIONS

The examiner objected to claims 1, 5, 15 and 16 for the use of “/” in the term “credit/debit card transactions.” Applicant has amended the claims to address this concern. Withdrawal of the objection is earnestly requested.

CLAIM REJECTIONS – 35 U.S.C. §112

Claims 1 Claims 1-9, 13, and 15-16 rejected under 35 U.S.C. §112, second paragraph, as allegedly failing to point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully traverses this rejection.

With regards to claims 1, 5, 15 and 16, the Office Action states (page 3):

Though it is likely that the claimed system collects sufficient debit/credit transactions to generate a pool which can be escrowed and sent to the government, it is not clear that this is the only outcome. If the business is all or mostly cash, a shortfall may result and in this case, the process would breakdown. Does the amount get forgiven? Does the merchant send a bank check or draft? Is the amount made up the next month. For the purposes of examination, the examiner will presume that there is sufficient withholdings from credit /debit to pay all taxes.

Applicant responds that claims 1, 5, 15 and 16 clearly point out and distinctly claim the process through which the invention operates. The points raised in the Office Action above speculate on hypothetical scenarios that are not relevant to the claimed features. More importantly, these hypothetical questions do not address why, as a matter of law, the claims are indefinite. Clearly, one skilled in the art of Electronic Fund Processor systems would understand the meaning and scope of the claim terms.

Regarding claim 5, 15 and 16, Applicant has amended the claims to include the punctuation suggested by the Examiner. However, Applicant does not understand the reasoning for the statement that “the flow should probably include an option to pay the arrears, debt, etc., possibly with some clarity as to how this is determined” (see page 4 of Office Action). Applicant wishes to point out for the record that the present applicant has previously gone through two rounds of amendments and an Examiner Interview (May 22, 2009) with regards to the claim language. Each time, the Office Action appears to change course by suggesting additional and/or different features that are “required” for making the claims purportedly more compliant with 35 U.S.C. §112(2). To date, the Applicant has tried to accommodate the Examiner’s requests. However, Applicant reminds the Office of the requirements of clarity and precision as defined by the MPEP:

The examiner's focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. When the examiner is satisfied that patentable subject matter is disclosed, and it is apparent to the examiner that the claims are directed to such patentable subject matter, he or she should allow claims which define the patentable subject matter with a *reasonable* degree of particularity and distinctness. Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire. Examiners are encouraged to suggest claim language to applicants to improve the clarity or precision of the language used, but should not reject claims or insist on their own preferences if other modes of expression selected by applicants satisfy the statutory requirement. (MPEP § 2173.02, emphasis added).

Withdrawal of the rejection is earnestly requested.

CLAIM REJECTIONS – 35 U.S.C. §103

Claims 1-8, 13, and 15-16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Cretzler (US Patent 5,644,724), in view of Gryglewicz (US Patent 6,993,502) and Agee (US Patent 6,889,200), and further in view of Piehl (US Patent 6,898,573). Applicant respectfully traverses this rejection.

Applicant does not understand why the current rejection based on Cretzler, Gryglewicz and Agee has been repeated in the present Office Action, as it was thought to be understood, after the Examiner Interview, that the references, alone or in combination, did not teach the presently claimed invention. More importantly, Applicant pointed out why one having ordinary skill in the art would have no apparent reason to combine the references in the manner suggested in the Office Action. While Applicant appreciates the citation of new reference Piehls, Applicant notes the Office Action did not address Applicant's arguments as to why the prior art was improperly combined. Applicant will address each of these issues below.

At the outset, Applicant points out that the present claims are directed to Electronic Fund Processor (EFP) systems, which, as was pointed out during the interview, are a specific type of device (see present specification, paragraphs [0015-18]). Applicant has amended the claims to clarify this point

As argued previously, the prior art, alone or in combination, fails to teach or suggest the features of "determining a first escrow amount in the computer system EFP based on the first sales amount, wherein the first escrow amount is determined as one of: (1) a predetermined percentage of one or more of the first and second sales amounts, and (2) a sum of a predetermined percentage of at least one of the first and second sales amounts, and wherein said predetermined percentage comprises: (1) a merchant tax rate, and (2) an estimate for generating escrow funds sufficient to pay a predetermined sum from the one or more of the first and second sales amounts over a predetermined number of sales periods; determining in the computer system whether the second sales amount exceeds the first escrow amount; crediting a second escrow account with the first escrow amount when the second sales amount exceeds the first escrow amount; and crediting a merchant account with an amount equal to the difference

between the second sales amount and the first escrow amount” as recited in independent claims 1 and 5, and similarly recited in claim 15.

Cretzler teaches a rudimentary tax collection system (col. 4, lines 25-47) where a transaction amount and a tax amount are determined and stored. As the amounts are summed for point-of-sale locations, merchants must notify banks, service banks and taxing authority banks of amounts to be collected for taxes (col. 5, line 48 – col. 6, line 5). Cretzler does not deal at all with escrow accounts for impounding escrow funds, and thus fails to teach the features recited above. Thus, as the Office Action has recognized (page 6), Cretzler does not disclose the features of (1) determining a first escrow amount based on the first sale amount, (2) crediting an escrow account with the first escrow amount, and crediting a second escrow account with the first escrow amount when the second sales amount exceeds the first escrow amount, (3) an estimate for generating escrow funds sufficient to pay a predetermined sum from the one or more of the first and second sales amounts over predetermined number of sales periods, and (4) an estimate for generating escrow funds sufficient to pay a predetermined sum from the one or more of the first and second sales amounts over a predetermined number of sales periods.

Regarding Gryglewicz, the document is related to a system that *aggregates* information relating to Internet sales for the purpose of determining the taxability of items (col. 1, lines 10-25). Regarding the use of escrow accounts, Gryglewicz discloses a main controller 40 that periodically requests funds *from a merchant bank* of each merchant for collecting taxes owed, and, such collected tax funds are either *deposited in an escrow account* from which funds are subsequently disbursed to the tax authorities, or the collected tax funds may be substantially immediately disbursed to the tax authorities (col. 8, lines 44-53). Since Gryglewicz relies on the Automated Clearing House (ACH) to resolve monies owed between banks, the amounts received at the main controller (server 40) would be a total amount of purchase or sales transactions (see col. 8, lines 32-53), where the tax calculations would be performed. As such, Gryglewicz would not calculate a first escrow amount, as presently claimed, and credit a second escrow account when a “second sales amount exceeds the first escrow amount; and crediting a merchant account with an amount equal to the difference between the second sales amount and the first escrow amount.”

The present Office Action repeats the argument that col. 8, lines 45-55 of Gryglewicz discloses this feature (see heading “C”, bottom of page 6 – page 7), however, As Applicant has argued above, this is clearly incorrect. Furthermore, the escrow account is created using a tax agent subsystem 48 (col. 6, line 61 – col. 7, line 56) embodied on one or more servers that requires a myriad of complex interfaces, browsers, gateways and plug-ins (see FIG. 8) for communicating transactions. Applicant submits that this configuration does not comport with the present requirement that the processes be carried out in an EFP (see also specification [0023-28])

Regarding Agee, the document teaches a system where a sale amount *and a tax amount* is transmitted from a merchant computer to a tax processing entity (col. 9, lines 1-25), where the entity processes the tax amount so that it may be allocated *between 2 or more taxing entities* (see, e.g., col. 4, lines 6-24; col. 14, claim 1: “determining an allocation of said tax amount to two or more taxing authorities”). Agee is wholly silent regarding escrow accounts, and similarly fails to teach or suggest to credit a second escrow account when a “second sales amount exceeds the first escrow amount; and crediting a merchant account with an amount equal to the difference between the second sales amount and the first escrow amount.”

Regarding Piehl, the document deals with processing tax escrow for independent contractors (i.e., service providers), particularly in the context of *employment and income taxes* (Abstract, col. 1, lines 46-64). Nothing whatsoever in Piehl deals with EFP’s, merchant transactions and processing of escrow amounts related to sales over a predetermined period. In col. 3, line 4 – col. 4, line 30, the Office Action even explicitly acknowledges that tax liabilities are determined by independents accounting firms to establish escrows for employment tax liabilities (Office Action page 8, bottom paragraph). Again, this has nothing to do with the presently claimed invention or any of the other cited references.

Applicant maintains that there is no apparent reason why one skilled in the art would combine the references in the manner suggested in the Office Action. As argued above, each of the Cretzler, Gryglewicz, and Agee documents deal with tax collection from a fundamentally different manner, which results in each reference teaching away from the other. Aside from the fact that these documents deal with tax collection, their mode of operation is completely different, and the Office has not provided a factual basis why the combination would be proper.

Moreover, the disclosure in Piehl is non-analogous to any of the other cited references, and the reason to combine Piehl (see page 9, Office Action) does not appear to make any sense – Applicant fails to see what relevance paycheck withholdings for independent contractors has to any of the claimed features or any of the cited references. As such, the Office has failed to meet its burden in establishing a prima facie case of obviousness.

For at least these reasons, the Applicants submit that the rejections under 35 U.S.C. §103 are overcome and should be withdrawn. An early Notice of Allowance is earnestly requested. If any fees are due in connection with this application as a whole, the Examiner is authorized to deduct such fees from deposit account no. 50-1290. If such a deduction is made, please indicate the attorney docket number (021180-00053 (BRWN 20.199)) on the account statement.

Respectfully submitted,

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